



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO.            |
|---|-------------|----------------------|---------------------------------|-----------------------------|
| 10/691,459  | 10/22/2003  | Ajay R. Bam          | MODI-0001-U01                   | 7339                        |
| 87084   | 7590        | 06/29/2012           |                                 |                             |
| GTC Law Group LLP & Affiliates<br>c/o CPA Global<br>P.O. Box 52050<br>Minneapolis, MN 55402 |             |                      | EXAMINER<br>LE, KHANH H         |                             |
|   |             |                      | ART UNIT<br>3682                | PAPER NUMBER                |
|   |             |                      | NOTIFICATION DATE<br>06/29/2012 | DELIVERY MODE<br>ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jsammartin@gtclawgroup.com  
jmonocello@gtclawgroup.com  
gtcdocketing@cpaglobal.com

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Notice of Abandonment</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/691,459             | BAM ET AL.          |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | KHANH H. LE            | 3682                |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
  
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
  
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
  
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
  
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
  
6. ☒ The decision by the Board of Patent Appeals and Interference rendered on 30 March 2012 and because the period for seeking court review of the decision has expired and there are no allowed claims.
  
7. ☒ The reason(s) below:  
  
See Continuation Sheet

|  |   |
|--|---|
|  | /KHANH H LE/<br>Primary Examiner, Art Unit 3682 |
|--|---|

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Item 7 - Other reasons for holding abandonment: The amendment filed 05/30/2012 after a decision by the Board of Patent Appeals and Interferences is not entered because:

1) Prosecution is closed for claims 55-60.

(See BPAI decision mailed 03/30/2012 at page 8: "The rejection of claims 55-60 under 35 U.S.C. § 103(a) as being unpatentable over Narasimhan and Official Notice is affirmed".

Also see Decision at pages 6-7 "For the foregoing reasons, we affirm the obviousness rejection of claims 1-5, 7-14, 16-22, 26-41, 44-50, 52-54, 61-63, and 65-73. We recognize however that our reasoning departs from that of the Examiner. Accordingly, we denominate the affirmance as a new grounds of rejection. The above reasoning does not apply to claims 55-60.")

and the proposed amendment for claims 55-60 was not suggested in an explicit statement by the Board under 37 CFR 41.50(c).

As provided in 37 CFR 1.198, prosecution of the proceeding before the primary examiner will not be reopened or reconsidered by the primary examiner after a final decision of the Board (here as to claims 55-60) except under the provisions of 37 CFR 1.114 (request for continued examination) or 37 CFR 41.50 without the written authority of the Director, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

Also see MPEP 1214.01 Procedure Following New Ground of Rejection by Board

"The new ground of rejection raised by the Board does not reopen prosecution except as to that subject matter to which the new rejection was applied. If the Board's decision in which the rejection under 37 CFR 41.50(b) was made includes an affirmance of the examiner's rejection, the basis of the affirmed rejection is not open to further prosecution."

2) Further the Amendment adds new claims 76-87.

37 CFR 41.50 (b) states:

" (b) Should the Board have knowledge of any grounds not involved in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding, which statement constitutes a new ground of rejection of the claim. A new ground of rejection pursuant to this paragraph shall not be considered final for judicial review. When the Board makes a new ground of rejection, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new evidence not previously of record is made which, in the opinion of the examiner, overcomes the new ground of rejection stated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart." (underline emphasis added).

Since new claims 76-87 are not claims "so rejected" by the BPAI, these claims cannot be entered and examined under 37 CFR 41.50 (b). .